



Ninety-Ninth Legislature - First Session - 2005
Committee Statement
LB 755

Hearing Date: February 9, 2005

Committee On: Judiciary

Introducer(s): (Chambers, Brown)

Title: Prohibit taking of a DNA sample by law enforcement without probable cause

Roll Call Vote – Final Committee Action:

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

Vote Results:

5	Yes	Senators Aguilar, Bourne, Chambers, Combs, Flood
	No	
2	Present, not voting	Senators Foley, Friend
1	Absent	Senator Pedersen

Proponents:

Senator Ernie Chambers
Timothy Butz
Dick Davis

Representing:

Introducer
ACLU Nebraska
self

Opponents:

Representing:

Neutral:

Mark Rhodes

Representing:

Nebraska County Attorneys Association

Summary of purpose and/or changes:

LB 755 prohibits the taking of a DNA sample from any person by law enforcement without probable cause or without receiving the voluntary consent of such person in connection with the investigation of a particular crime. The bill also establishes a procedure which law enforcement must utilize when obtaining consent to take a DNA sample. In order to be considered voluntary consent, the subject donating the DNA sample must declare in writing that:

1. The sample is knowingly and voluntarily given in connection with the investigation of a particular crime;
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2. They have been informed that the request for a DNA sample may be refused and that such refusal does not provide probable cause or reasonable suspicion to believe the person has committed a crime; and
3. No threat, pressure, duress, or coercion of any kind was employed, whether (a) direct or indirect, (b) express or implied, or (c) physical or psychological.

Any DNA sample obtained in violation of these requirements is inadmissible in any proceeding regardless of purpose. A law enforcement officer acting in violation of these requirements is guilty of a class I misdemeanor.

The bill also establishes the following procedures for law enforcement agencies regarding the handling of DNA test results and samples:

1. A person shall be immediately notified in writing upon the determination that he or she has not been implicated by his or her DNA sample with regard to the crime for which the DNA sample was obtained;
2. The DNA sample shall be returned to the donor with 10 days after the determination that the donor is not implicated in the crime for which the sample was obtained;
3. The law enforcement agency shall purge all records and identifiable information pertaining to donor of the DNA sample.

Lastly, the bill provides a right of action to persons whose rights under the act have been violated to enjoin such violation, or in the case of a knowing violation to seek damages. A person whose rights were found by a court to be knowingly violated is entitled under the bill to damages of not less than \$1000 and reasonable attorney fees.

Explanation of amendments, if any:

The committee amendment to LB 755 changes the procedure for obtaining consent for a DNA sample and removes the criminal penalty for violating the provisions of the act.

The procedure for obtaining consent to take a DNA sample without probable cause in the original bill required the following declaration in writing by the donor before such consent could be considered voluntary:

- The sample was knowingly and voluntarily given in connection with a particular crime;
- The person has been informed of their right to refuse to request for a DNA sample and that such refusal does not constitute probable cause or reasonable suspicion that the person has committed a crime; and
- No pressure, threats, or coercion of any kind was employed.

The committee amendment changes this written declaration to only require it to inform a person of their right to refuse the request to donate DNA and that such a refusal does not constitute probable cause or reasonable suspicion that a crime has been committed. The requirements that the sample is knowingly and voluntarily given and that no threat, pressure or coercion was employed still must be adhered to, but no longer have to be included in the written declaration signed by the donor.

The committee amendment also strikes penalty provision from the bill as there are civil remedies provided to enforce the provisions of the act, if necessary.

Senator Patrick J. Bourne, Chairperson